88-1811

Supreme Court, U.S.
FILED
MAY 8, 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

MICHAEL J. MAJOR - PETITIONER

vs.

PENNWELL PUBLISHING COMPANY - RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Michael J. Major, Pro Se
610 Saddle Drive
Port Townsend, WA 98368
(206) 385-4156

QUESTIONS PRESENTED

A. WHEN THE PARTNER OF A LARGE LAW FIRM OFFERS A BAD CHECK "IN GOOD FAITH" AS THE "COMPLETE SETTLEMENT" OF A CONTRACT DISPUTE, DOES THIS BAD CHECK CONSTITUTE GOOD FAITH OR BAD FAITH?

B. WHEN A PRO SE ATTEMPTS TO PRESENT THIS BAD CHECK AT A SMALL CLAIMS HEARING, DOES THIS PARTNER PLUS TWO OTHER LAWYERS HAVE THE RIGHT TO CONSPIRE WITH A SMALL CLAIMS JUDGE TO DENY THE PRO SE ANY POSSIBILITY FOR A HEARING OR APPEAL IN STATE COURT?

C. WHEN THE PRO SE ATTEMPTS TO PRESENT THE CONCRETE EVIDENCE OF THIS CONSPIRACY TO THE RELEVANT STATE COURTS AND SUBSE-QUENT FEDERAL COURTS, DO THESE SAME LAW-YERS AND VARIOUS PRESIDING JUDGES HAVE THE RIGHT TO COLLUDE IN SUPPRESSING THIS EVIDENCE, HARASSING THE PRO SE THROUGH AN

ONGOING DISRUPTION OF CIVIL PROCEDURE, AND DENYING HIM THE RIGHTFUL AWARDS WHICH WOULD FLOW FROM THE UNCOVERING OF THIS EVIDENCE IN OPEN COURT?

D. DOES A FEDERAL JUDGE, IN ADJUDICATING A CONTRACT DISPUTE, HAVE THE RIGHT TO TOTALLY DISREGARD THE CONTRACT AGREED TO AND SIGNED BY BOTH PARTIES, INSTEAD RELYING UPON A PREVIOUS CONTRACT WHICH WAS NEITHER ACCEPTED NOR SIGNED BY THE PRO SE, ALSO BASING HIS FINDINGS UPON HEARSAY, AFFIDAVITS REVEALED TO BE PERJURED AT THE TRIAL OVER WHICH HE PRESIDED, PLUS FABRICATIONS PRESENTED BY THE LAWYERS FOR WHICH THERE ARE NO DOCUMENTATION AND WHICH ARE IN DIRECT CONTRADICTION TO ALL OF THE EXISTING DOCUMENTATION?

E. DOES THIS FEDERAL JUDGE, IN RULING FOR THE PRO SE FOR A PORTION OF THIS CONTRACT DISPUTE, HAVE THE RIGHT TO THEN ARBITRARILY DENY HIM ALL OF THE AWARDS

FLOWING FROM HIS DECISION, WHEN THESE AWARDS ARE STIPULATED IN STATUTORY PROVISIONS FOR ATTORNEY FEES, THE EXPLICIT TERMS OF THE CONTRACT, PLUS ALL OF THE RELEVANT STATE AND FEDERAL LAWS REGARDING AWARDS STEMMING FROM A BAD FAITH BREACH AND BAD FAITH ACTIONS?

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Petitioner, Michael J. Major, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit entered in the above entitled cause on March 10, 1989.

I.

OPINION BELOW

The order and judgment of the Court of Appeals is attached as Appendix A. The judgment of the district court for the Northern District of Oklahoma was issued on August 20, 1987 and is attached as Appendix B.

II.

JURISDICTION

The opinion of the Court of Appeals for the Tenth Circuit was filed on March 10, 1989. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C. §1254(1).

III.

CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV of the United States Constitution provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (emphasis added to pertinent section)

IV.

STATEMENT OF THE CASE

A. WHEN THE PARTNER OF A LARGE LAW FIRM OFFERS A BAD CHECK "IN GOOD FAITH" AS THE

"COMPLETE SETTLEMENT" OF A CONTRACT DISPUTE, DOES THIS BAD CHECK CONSTITUTE GOOD FAITH OR BAD FAITH?"

Petitioner-Plaintiff, Michael J. Major, ("Major"), is a writer living in Port Townsend, WA. Respondent-Defendant, PennWell Publishing Company ("PennWell"), is a publisher of trade magazines headquartered in Tulsa, OK. Major contracted with one of PennWell's magazines, Computer Graphics World ("CGW"), based in Littleton, MA, for six articles at $800 each plus normal expenses.

After Major had submitted the first of these articles, on the Boeing Company ("Boeing") and Marathon Oil ("Marathon"), the CGW editor, Tom McMillan ("McMillan"), wrote Major he intended to pay for and publish the Boeing article but was terminating the contract for the others. Since the contract does not allow for a unilateral termination, and since Major could not find anyone at CGW who would engage in a reasonable dialogue, he wrote CGW he would, if necessary, send

newsletters detailing the facts of the termination to the public, including PennWell's advertisers.

Robert F. Biolchini ("Biolchini"), a partner at PennWell's 40-member law firm, Doerner, Stuart, Saunders, Daniel & Anderson, wrote Major threatening a law suit unless he remained silent about the termination. Biolchini also urged Major to accept the check for the Boeing article, already sent, in lieu of of the nonpayment for the latter five articles, as a "jesture" of "good faith" and as the "complete settlement of this dispute". Biolchini thereupon ordered a stop payment on this check. No notice or explanation was given Major, who found out about the bounced check two weeks later only when the checks he had written to pay the rent and buy groceries for his family also began bouncing.

McMillan later admitted at trial that he confiscated Major's article and photos and published an article on Boeing with his

byline instead of Major's.

B. WHEN A PRO SE ATTEMPTS TO PRESENT THIS BAD CHECK AT A SMALL CLAIMS HEARING, DOES THIS PARTNER PLUS TWO OTHER LAWYERS HAVE THE RIGHT TO CONSPIRE WITH A SMALL CLAIMS JUDGE TO DENY THE PRO SE ANY POSSIBILITY FOR A HEARING OR APPEAL IN STATE COURT?

Two months later, after PennWell failed to respond to about a dozen of Major's negotiating letters, he mailed his newsletters which PennWell also ignored. After the PennWell lawyers sabotaged Major's two separate attempts for a Better Business Bureau arbitration, Major filed an affidavit in the Tulsa County Court for a small claims hearing, scheduled for 6/23/86. Major requested the $820.82 due for the Boeing article, $400 in travel expenses, and $279.17 in collection costs, for a total of $1,500.

As evidence, Major intended to bring the contract, with its stipulation that any payment was non-refundable, signed by the CGW editor, David Pope ("Pope"), the McMillan

letter in which he stated he would pay for and publish the article; Biolchini's "good faith" letter; and the expression of this "good faith", the bad check.

On 6/17/86 Biolchini filed a motion to transfer and paid the required $50 fee in respect to OK Stat. §1757 (Apdx. K). However, both this statute and the motion to transfer explicitly states the motion "shall be heard" at the scheduled hearing. Biolchini knew at the time that he would not complete this mode of transfer since he had no intention of attending the hearing.

On 6/18/86 Biolchini filed a $300,000 counterclaim for "libel and interference with business relationships". Although he paid the $3 filing fee, he did <u>not</u> pay the $25 affidavit fee stipulated by OK Stat. §1759 (Apdx. L) to effect the transfer to civil court. Biolchini knew at the time he would not complete this mode of transfer since he had no intention of paying the required fee in timely fashion.

On 6/19/86, the same day Major received the counterclaim in the mail, he also received, via Federal Express, two contradictory communications: Biolchini's motion to transfer and a letter from a second PennWell lawyer, Kathy R. Neal ("Neal") who called Major's attention to §1759 which, she wrote, "provides for automatic transfer" of a small claims court claim if the counterclaim is for more than $1,500. Neal did not inform Major, however, that PennWell's counterclaim was not only not automatic, it was also legally impossible since the required fees had not been paid.

The clear impression conveyed to Major was that PennWell was so sincere about its counterclaim tnat it was effecting it through not one but two modes of transfer. However, since these lawyers knew they intended to abort both modes of transfer and were using these papers, along with the counterclaim, not to promote a legitimate suit through proper civil procedure,

but only to bring Major to his knees to beg PennWell to drop its $300,000 counterclaim in exchange for Major dropping his claims, these papers represented not simply bad faith, but blackmail.

These two contradictory communications put Major in a dilemma. He knew from the motion to transfer, which stipulated it would be heard at the hearing, that if he did not attend the hearing, he would default not only on his $1,500 Boeing claim but also on PennWell's $300,000 transfer. On the other hand, if what Neal said was true and the transfer was "automatic", it would be a waste of time and money, not to mention stress, to fly to Tulsa for a small claims hearing regarding a matter already transferred to civil court.

Major called the courthouse several times. Three different clerks assured Major the case had not been transferred and the judge would hear his case at the hearing. Major flew to Tulsa.

After the docket reading, a third PennWell lawyer, Scott R. Rowland ("Rowland"), told Major there would be no hearing for he had met with the judge beforehand and secured his commitment to sign an order of transfer. When Major asked how the judge could agree to grant a motion to transfer, when the hearing, at which the motion was to be heard, hadn't taken place, Rowland pointed Major toward Judge James H. Griffin ("Judge Griffin"), who was on his way to recess.

Major put this question to Judge Griffin, who replied that the hearing and any order relating to same were irrelevant due to the fact that PennWell had filed a counterclaim in excess of $1,500, adding that the $300,000 counterclaim made the transfer "automatic", that it was "statutory" and that he had to "obey the law". Thus the conspirators used §1757 to require Major to fly to Tulsa to attend the hearing and §1759 to send him home without having had the chance to attend

it. This vicious harassment conveyed a clear message to Major as to what he might expect should he ever presume to return to Tulsa to seek a fair trial in civil court.

After Major returned to Washington, he spent several hours on the phone with the Tulsa County Court clerks trying to find out the status of the case. No one knew. The small court clerks said the case was no longer filed in their court. The civil court clerks said the case was not filed in their court. At the end of all these conversations, Major was invariably referred to the law clerk James Roberts ("Roberts"). Roberts said he did not know what to make of the situation, that never before had he come across a defendant applying to two modes of transfer when either one would have been sufficient.

Finally, a clerk discovered the missing $25 fee. She called a PennWell lawyer and asked hi to pay, which he did, on 6/25/86. Major was no then aware of the significance of this late

payment. Apparently the clerks were not either. To complete the mechanics of the transfer, Raymond concluded that since the counterclaim was for more than $1,500, the case should have been transferred pursuant to §1759. This was consistent with the impression left by Judge Griffin's docket entry which indicated that the counterclaim put the case above his jurisdiction.

Working on the basis of this same impression, which was conveyed to him by Raymond, Major filed a notice of appearance on 7/3/86, thinking this would give him an additional 20 days response time. On 7/14/86, a Tulsa lawyer, with whom Major had conferred, but had not hired, called Major to warn him he was within a few hours of defaulting on the $300,000 counterclaim and that he should call the court to ask for an extension. This lawyer said Major's notice of appearance was meaningless in view of the fact of Judge Griffin's order of transfer which required

a 20 day response time.

Major could not believe it. For Judge Griffin had given him a very clear understanding that he would not sign such an order, for it was irrelevant in terms of the "automatic" transfer via §1759. Neither Judge Griffin nor a clerk had ever mailed such an order. Had it not been for the sheer luck of this lawyer going into the files on his own and calling Major, Major would have had no way of knowing this Order existed until the 20 day response time had passed and Penn-Well had duly informed him of same.

Major did find such an order did exist, however (Apdx. C). Moreover, it had been doctored. The original file stamp of 6/23/86 had been scribbled out and the new one added of 6/27/86.

Judge Griffin had initially had it filed on 6/23/86, but then, in anticipation of Major calling the courthouse (after their sharp verbal exchange), pulled it, concealing it not

only from Major but also the clerks. Several months later Roberts told Major that, had he known about this order of transfer, he would not have been under any confusion as to how to effect the mechanics of the transfer. Judge Griffin waited until Major stopped calling the courthouse, and both he and the clerks were under the impression that the transfer had been effected via §1759, before Judge Griffin slipped back into the files his order transferring it via §1757.

In other words, Judge Griffin, in order to protect his local big business from attending a small claims hearing where what was at stake was $1,500, colluded with the PennWell lawyers to set Major up for an extortionary $300,000 default to drive Major into bankruptcy, from which posture he would hardly be in a position to pursue any claim he might have against PennWell.

Moreover, this deception was designed to deny Major the due process not only of

the small claims hearing but also to so hoodwink him that he would not catch on until the time limitation for a normal appeal to the Oklahoma State Supreme Court had run out. Since Judge Griffin made certain Major did not receive his order within that time period, Major had no order upon which to appeal.

The PennWell lawyers resorted to this illegality for the simple reason that they knew they could not sustain a denial of the Boeing claim or the defense of their counterclaim in an open court, even before a judge biased in their favor. But to prefect this scam, PennWell had to voluntarily default on both its counterclaim and the Boeing claim.

PennWell defaulted its counterclaim by not paying the required $25 fee before the small claims hearing as stipulated by §1759. PennWell defaulted on the Boeing claim by waiving its right to the hearing through meeting with the judge ahead of time and asking that it not take place. Major's affidavit clearly states

a default judgment will be entered against the defendant if he does not attend the hearing, which is also stipulated by the motion to transfer (also defaulted), Judge Griffin's order, and §1757. Moreover, Judge Griffin's order, pursuant to §1757, which stipulates a hearing, pursuant to the motion to transfer which stipulates a hearing, and pursuant to Major's affidavit which stipulates a hearing -- after Judge Griffin had already dismissed that hearing -- is a fraud.

In addition, Rowland has twice publicly acknowledged his highly improper meeting with Judge Griffin prior to the hearing. One instance will suffice. On pg. 138 of the 6/25/87 deposition he took of Major, Rowland stated:

> "Well, I'll represent to you that - it's not my deposition, but I'll represent to you that when Judge Griffin walked into the classroom, I informed him that on this particular case we had filed a counterclaim in excess of $1,500. And that was the extent of that."

The "extent" of this representation is that even though PennWell filed the counterclaim, it did not do so in a proper manner to effect the transfer via §1759 and so put the case out of Judge Griffin's jurisdiction, for, as Rowland knew, the required $25 had not been paid.

Judge Griffin knew it too. He didn't need a defendant lawyer to tell him a case had been transferred. He had a clerk to tell him that. No clerk told him for the case had not been transferred. Nor was the transfer registered on the court records.

And, as every judge, lawyer, and clerk in Oklahoma knows, it is very easy for a defendant to transfer a case according to either §1757 or §1759 provided proper civil procedures are followed. Statute §1759 does, in fact, provide for an "automatic" transfer, but only provided the fees are paid before the time of the hearing. And Statute §1757 is almost automatic. All the defendant has to do is pay

the fees, attend the hearing, and give almost any reason at all (i.e. the desire for the more formal procedures of civil court) and the case will be transferred. The one reason that will not be accepted is that the defendant wants to file a counterclaim for more than $1,500, for the very simple reason that the defendant had ample opportunity to effect that sort of transfer via §1759 and should have already done so according to the stipulations of that law.

OK Statute §1759 clearly states that the defendant

> "... shall deposit with the clerk the court costs that are charged in other cases, less any sums that have been already paid to the clerk, or his claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure."

This law is not discretionary. It is, as Judge Griffin said, "statutory", and he was required to "obey the law". But Judge Griffin, instead of dismissing the

counterclaim, rather dismissed the small claims procedure. Judge Griffin, in short, broke the law, as did the PennWell lawyers. And it is this breaking of Oklahoma law which is the foundation of the Conspiracy and of PennWell's entire case.

C. WHEN THE PRO SE ATTEMPTS TO PRESENT THE CONCRETE EVIDENCE OF THIS CONSPIRACY TO THE RELEVANT STATE COURTS AND SUBSEQUENT FEDERAL COURTS, DO THESE SAME LAWYERS AND VARIOUS PRESIDING JUDGES HAVE THE RIGHT TO COLLUDE IN SUPPRESSING THIS EVIDENCE, HARASSING THE PRO SE THROUGH AN ONGOING DISRUPTION OF CIVIL PROCEDURE, AND DENYING HIM THE RIGHTFUL AWARDS WHICH WOULD FLOW FROM THE UNCOVERING OF THIS EVIDENCE IN OPEN COURT?

Major attempted to remove the Boeing case to the U.S. District Court at Seattle. He soon discovered he had no legal basis for doing so, but, in the process, unraveled the Conspiracy. Major acknowledged his technical errors, but argued they were irrelevant in terms of the Conspiracy, the evidence he presented as the basis for a new trial. However, the presiding judge, Judge

Barbara J. Rothstein ("Judge Rothstein"), reprimanded Major, stating he had no basis whatsoever for his case, and that the actions of the PennWell lawyers were blameless, thus giving those lawyers carte blanche in their vendetta to destroy Major and his family for no other reason than he sought a fair trial. (Apdx. D)

Major appealed twice to the Oklahoma State Supreme Court, once to Judge Griffin, and twice to Judge Jane P. Wiseman ("Judge Wiseman"), the presiding judge at the Tulsa County Court, who also withheld vital timeliness information from Major in a way analagous to Judge Griffin, causing Major to again come perilously close to defaulting on the $300,000 counterclaim. All of these appeals were ignored.

Major repeatedly requested that Judge Wiseman dismiss the counterclaim. For PennWell, after defaulting during the Conspiracy, again defaulted on both

the Boeing claim and its own counterclaim by failing to respond to Major's amended petition and answer to counterclaim in the 20 days stipulated by Judge Griffin's order and §1757, or ever. After almost three years from its filing, this unacted upon counterclaim remains on the Tulsa County Court docket.

On 10/7/86 Major filed at the U.S. District Court in Tacoma, WA, his complaint for Breach of Contract (for the latter five articles), Conspiracy to Deny Payment on a Defaulted Claim, and Intentional Infliction of Emotional Disress.

The Seattle, WA PennWell attorney, Bruce D. Campbell ("Campbell"), Perkins Coi, filed papers with outrageous distortions, such as turning Major explicit statement that he would continue to fight the institutionalized violence of the vendetta with peaceful, law-abiding means into the threat that Major would put a shotgun to the head of any judge who came into contact with the case.

As an alternative to dismissal, Campbell introduced an affidavit by PennWell vice president, V. John Maney ("Maney") arguing for a transfer to Tulsa. Maney offered a "partial" list of 14 "parties and witnesses" who lived in Tulsa. Yet since most of the list was made up of people such as an ad salesman in California who did not live in Tulsa and/or who had only tenuous or a non-existent connections with the case, it was clear that this laundry list was only another ploy to obstruct justice. PennWell has since conclusively demonstrated this affidavit's bad faith by calling only four "parties and witnesses" to the trial, two of them by phone deposition, and all four of them from, not Tulsa, but Littleton, MA.

Nevertheless, on the basis of this clearly-perjured affidavit, the presiding judge, Judge Robert J. Bryan ("Judge Bryan"), transferred the case to Tulsa for the "convenience of parties and witnesses". (Apdx. E)

After the case was transferred to the U. S. District Court in Tulsa, to be tried, pursuant to 28 U.S.C. §1391(a) and (c), under Judge Thomas R. Brett ("Judge Brett"), Major voluntarily dismissed his Boeing claim from the Tulsa County Court for consolidation. In a petition to amend complaint he introduced the Boeing claim as a fourth cause, Larceny, arguing that PennWell's soliciting of the article, paying for it, then bouncing the check while confiscating it constituted larceny. He also introduced a fifth cause, Libel, showing how PennWell's "shotgun" and other libels were instrumental in obstructing the justice of a fair hearing in various courts. Major also introduced a motion for summary judgment.

Rowland filed a motion to dismiss the Conspiracy cause which was several months untimely in respect to Fed.R.Civ.P. R.12(a), and, moreover, already adjudicated in respect to R. 12 (b)(6), since Judge Byran's order clearly

states that he transferred the case to Tulsa not to see if it should be tried there, but to stipulate it should be tried there for the "convenience of parties and witnesses".

PennWell twice formally defaulted on Major's summary judgement motion. Rowland lied to both Major and the court to secure an extension, claiming a "severe snowstorm" prevented an affidavit from Littleton, MA arriving in overnight mail. Major discovered and reported to Judge Brett that for the entire week in question there had been only a half inch dusting of snow and no postal or Federal Express planes had been delayed.

Moreover, in response to Major's then filing both default and summary judgments against PennWell, Rowland, offering absolutely no defense at all, simply listed Major's motions laundry-list fashion, and stated they should be "stricken or denied without hearing" and that the court should

impose Rule 11 sanctions against Major for submitting those motions. Judge Brett did what he was asked.

Judge Brett ordered Major to fly to Tulsa for a 3/19/87 hearing for a status conference and to resolve the summary judgment and other motions. But there was no status conference nor did Judge Brett address the summary judgment motion since he told Major he hadn't read any of his papers since he had "399 more important cases to attend to".

The scheduling of the case and response to the summary judgment motion arrived in the mail several weeks later in the form of Judge Brett's 4/21/87 order (Apdx. G). Through this sleight of hand an actual hearing on the Conspiracy, in which the facts might be aired in open court, was bypassed.

Judge Brett proclaimed the Conspiracy is "so lacking in factual allegation and proof that it must be dismissed." Yet the factual allegations and proof (as detailed in Question

B, supported by court records and documents, statutes and PennWell papers), submitted to Judge Brett, were suppressed by him. Thus, Judge Brett allowed PennWell, in violation of Rule 56(e) to prevail on "mere allegations or denials". Judge Brett's order is an exercise in the same vagueness. He refers only to general allegations, studiously avoiding the specifics such as Judge Griffin meeting with Rowland ahead of the hearing; the theft of the $25 court fee; and Judge Griffin, in violation of §1759, dismissing the hearing instead of the counterclaim.

While illicitly dismissing the Conspiracy cause, he unlawfully prolonged the case in cooperation with PennWell's successful efforts to bankrupt Major. Judge Brett's retaining of the emotional distress cause was hypocritcal since, if all that remained of the case was what he derisively called a "simple contract dispute", it could not reach the

level of outrage. As set forth in Question D, the nature of the contract was such that no additional relevant facts could (or did) emerge at trial. Besides, Judge Brett based his denial of summary judgment for the contract issue on the late-arriving and transparently perjured affidavit of CGW publisher, Robert Holton ("Holton"). One example: Holton swore "the Boeing article failed to meet the 'highest editorial standards' promised by Major and was not of a publishable quality" when Judge Brett had in front of him the letter of Holton's managing editor who stated he was intending to publish and pay for the article and the check Holton had issued for same. The only additional fact or document to emerge at the trial regarding Boeing was this same managing editor's memo stating the article was "acceptabl and setting an immediate date for publication.

Judge Brett continually belittled Major and his case, and made constant threats of sanctions dismissal, needless trips to Tulsa, and other

harassments. Judge Brett required Major to make the 1,500 mile trip to Tulsa for a non-existent status conference and summary judgment hearing despte the fact that Major requested a phone hearing, and such requests are invariably granted when one of the parties lives a great distance away. The only business remotely approached was Judge Brett's dismissal of Major's motion to amend complaint. But Judge Brett neither expected nor invited oral arguments. He simply announced a decision already made. Major's presence was not required for a phone conference, much less a 1,500 mile trip. Judge Brett could have simly had a clerk mail the decision through the mail, as he eventually did (Apdx. F). This needless trip was simply a reenactment of Judge Griffin's vicious harassment.

Judge Brett ordered a jury trial when neither side had requested one. He ordered Major, who filed his suit in Tacoma, to fly to Tulsa to have his deposition taken before a

U.S. Magistrate "day by day" until completed. (Apdx. H). Major forced Judge Brett to back off on these two harassments, but only after considerable time, expense and distress.

After threatening Major with sanctions and/or dismissal if he did not cooperate in discovery, he allowed PennWell to go past his scheduled deadline without releasing any of the requested papers (in the process taking off a week from Major's time to deliver and setting PennWell's date on the Friday before trial briefs were due). Judge Brett allowed PennWell to suppress most of Major's discovery requests, any one of which would have implicated PennWell in the Conspiracy or other wrongdoing. Major filed several motions to compel and, at no time, did PennWell, in violation of Fed.R.Civ.P. R.34(d), file a protective order.

When Major discovered that CGW planned to publish an article on Boeing in August after the July trial, he requested this article

be brought to trial in manuscript form. Rowland refused. Major filed a motion to compel and to amend complaint to include PennWell's violation of U.S. Copyright laws. Again, PennWell offered no argument and filed no protective order, and Judge Brett denied Major's requests (Apdx I) stating that CGW's publishing an article on Boeing, after confiscating Major's article on Boein, was "unrelated", and that in being exposed in open court to this flagrant violation of U.S. Copyright laws, Pennwell would be "greatly prejudiced".

On the other hand, Judge Brett continually forced Major to hand over to PennWell objectionable material despite the fact that Major filed protective orders and PennWell, never filing a motion to compel, offered no reasons whatsoever. And Judge Brett then went on to falsify this material.

One example has to suffice. Major ob-

jected to PennWell's entering his letters mailed after the Biolchini letter since they were after and not relevant to the contract termination; were personal, not sent to the public and so were not relevant even to the counterclaim; the copyright laws gave Major the public reproduction rights to these letters; they were negotiating instruments; were entirely redundant of what Major had stated in other contexts; and PennWell intended to use them only to perpetuate its libel. In his point 33, especially in conjunction with point 34 (Apdx. G), Judge Brett conveys the clear impression that Major attempted to extort $700,000 from PennWell or he would then damage PennWell's business and reputation through his newsletters; and then Biolchini replied threatening Major with a potential libel action.

However, the fact is that Biolchini's letter is dated 2/3/86 and his threat was directed to stifling Major's stated intention of

exercising his First Amendment rights by airing a complaint in public. Major's letter, of 2/14/86, used the $700,000 as a defense against PennWell's threat of malicious prosecution. In this same letter Major explicitly stated he would drop the $700,000 charge in exchange for the contractual amount due.

In the same note 33 Judge Brett stated the "libelous character" of the newsletters was not before his court. But that did not deter him from adjudicating the matter in PennWell's favor by reporting not that PennWell alleged that their purpose was "damaging PennWell's business and reputation", but proclaiming this as a fact. As Major testified, the purpose of the newsletters was to appeal to PennWell's conscience. PennWell left Major no option, short of litigation, but to make the matter public, since it refused any rational dialogue with Major, leaving unanswered the dozen letters Major wrote after the Biolchini threat letter, as well as

sabotaging Major's two separate attempts at a Better Business Bureau arbitration.

Whenever Judge Brett could use this $300,000 "counterclaim" (irrelevant to the proceedings, since not only had it been improperly filed, illegally transferred, twice defaulted, and never acted upon in state court, it has also never been filed in federal court) as an instrument of blackmail and intimidation, he did not hesitate to do so.

At the 3/19/86 meeting Judge Brett made abundantly clear to Major that the only papers he would give serious consideration to were PennWell's motion to dismiss and the counterclaim. He shouted at Major "not to return to this court until you attempt to settle with these people!" Biolchini's offer? "You drop your claims and we'll drop ours." In other words, at the very point that the illicit power of PennWell's blackmail threat had been enervated, Judge Brett revitalized it with the seal of a U.S. District Court.

However, whenever Major referred to this counterclaim as a critical factor in his emotional distress, which was a legitimate cause before the court, Judge Brett hypocritically said the matter was irrelevant since that claim was "pending" in state court.

Even on the untenable premise that the counterclaim had been properly filed, it was still, on its face, in transparent bad faith since PennWell never acted upon it again once it had fulfilled its function of obstructing the justice of the small claims hearing.

Major has repeatedly written PennWell that if it could prove a single line of the newsletters was in any way libelous or untrue and furnish evidence that they caused PennWell to lose ten cents much less $100,000 during the months of April and May, 1986, he would immediately drop all his claims and send PennWell a check for $100,000. PennWell has never responded to this offer.

Furthermore, Judge Brett was well aware that discovery had uncovered the fact that all of the PennWell executives knew full well that the only "damage" that could be associated with the newsletters was that of the truth, and that the PennWell counterclaim was never intended to be more than a vehicle for malicious prosecution and the obstruction of justice.

Senior vice president, Joseph A. Wolking ("Wolking"), who was soon to perjure himself by signing the counterclaim's verification, wrote in his 4/28/86 memo that he knew Major "was protected by the First Amendment" and "there is no judicial recourse for us ... " thus acknowledging that the newsletters were in no way libelous or untrue or PennWell would have judicial recourse under the libel laws. In his 6/10/86 memo, Michael Elphick ("Elphick"), publisher of one of the PennWell publications to all of the advertisers of which Major mailed his newsletters, wrote, "We have

no tangible evidence that he (Major) has caused us to lose any advertising business." Yet just two weeks later, in his 6/23/86 memo, president Philip C. Lauinger, Jr. ("Lauinger"), knowing that Major's newsletters were absolutely true and had caused PennWell no loss of ad revenues, announced PennWell was sueing Major for libel and $100,000 in lost ad revenues plus $200,000 in "punitive damages.

Yet Judge Brett declared that all PennWell's actions from the termination to the bounced check to the filing of the counterclaim and beyond were "not motivated by bad faith", were for the purpose of protecting PennWell's "legitimate business interests", and did not constitute "extreme and outrageous conduct". Judge Brett termed Major's bringing to his court the undeniable evidence of PennWell's rampant malice and illegality as the result of his "demonstrated unfortunate emotional instability."

The appeals court backed Judge Brett all of the way. After filing three motions that Judge Brett disqualify himself, Major filed a mandamus petition in the appeals court, which was likewise denied. After Major brought up brief transcript excerpts which showed that Judge Brett based his trial findings upon affidavits revealed to be perjured by the testimony of the defendants at the very trial over which he presided (see Question D) -- which moved Judge Brett to write that Major was "mentally deranged" -- PennWell motioned that the entire transcript be brought up. Major pointed out that the this was in violation of the appeals court explicit rules regarding unnecessary transcripts, that the main issues such as the Conspiracy had been suppressed before trial, and gave reasons for his accurate prediction that PennWell could not and would refer to anything in the transcript that was not entirely redundant of what had been put forth countless times before. The appeals

court ordered Major to bring up and pay for the unnecessary transcript which PennWell subsequently only superficially and barely referred to. Major attempted to issue additional summonses to include other parties such as the United States and the PennWell law firms as defendants. Judge Brett's personal clerk, in violation of Fed.R.Civ.P.R.4 (a) refused, instead sending the request to the appeals court, which buried it.

This Court should understand that, at no time (with one exception) has any lawyer or judge even addressed, much less disproved any of Major's facts, logic, laws, interpretations, or documents regarding the Conspiracy. The one exception is that Rowland, in his appeals brief, in acknowledging that PennWell had not paid that critical $25 fee, the linchpin of this case, put forth the preposterous argument that since Major had paid the $25 required fee for his small claims affidavit, PennWell did not have to pay its $25 fee for

the transfer of its counterclaim to civil court.

From first to last, the PennWell lawyers and judges substituted arguments libel for legal. The PennWell lawyers started it off, relentlessly pressing the "pro se" button, with phrases such as "pro se, ignorant of the law and civil procedure", who "strikes out at judges", calls a federal judge a practicing witch, threatens to put a shotgun to the heads of presiding judges, is "paranoid", all of which dovetailed neatly with Judge Brett's depiction of Major's "emotional instability" and "mental derangement".

In response to this outrage, the appeals court found it

> ... "important to commend the district court on its tempered condemnation on plaintiff's often abusive personal attacks on the presiding judge and others involved in this litigation. The tolerant but firm professionalism exhibited by the district court in this case was as exemplary as plaintiff's conduct was inappropriate."

In the context of the PennWellian legal-speak which characterizes this case, it's clear that what the appeals court really means by Major's "abusive personal attacks" is that he unflinchingly used the truth as a weapon to cut through the sanctimonious sham of the prolamations of all of these lawyers and judges to expose the fact that they have defiled not only their personal honor but also that of the system of justice which gives them sustenance; through their immersion in the moral cesspool of a small time small claims swindle designed to cover up an arrogant attorney's personal act of larcency. What the appeals court really means by Major's "inappropriate conduct" is that a United States citizen has not only refused to submit to becoming a compliant victim to these people's vendetta of illegality, irrationality, and institutionalized violence, but instead has consistently presented irrefutable and irrefuted evidence that the legal

foundations of their case are the breaking of law, default, and the theft of a $25 court fee. Shakespeare said it best: "Truth is truth beyond all reckoning."

D. DOES A FEDERAL JUDGE, IN ADJUDICATING A CONTRACT DISPUTE, HAVE THE RIGHT TO TOTALLY DISREGARD THE CONTRACT AGREED TO AND SIGNED BY BOTH PARTIES, INSTEAD RELYING UPON A PREVIOUS CONTRACT WHICH WAS NEITHER ACCEPTED NOR SIGNED BY THE PRO SE, ALSO BASING HIS FINDINGS UPON HEARSAY, AFFIDAVITS REVEALED TO BE PERJURED AT THE TRIAL OVER WHICH HE PRESIDED, PLUS FABRICATIONS PRESENTED BY THE LAWYERS FOR WHICH THERE ARE NO DOCUMENTATION AND WHICH ARE IN DIRECT CONTRADICTION TO ALL OF THE EXISTING DOCUMENTATION?

After the CGW editor, Pope, agreed to sign Major's contract for the six commissioned articles, the CGW publisher, Holton (as Major was to learn later) instructed Pope to insert a loophole clause of "payment upon acceptance", which, in the trade, is an euphemism which means, when the chips are down, a magazine can reject a commissioned work for any reason at all because of "non-acceptance". Major rejected this change and successfully negot-

iated Pope back to signing the original contract (Apdx. M).

However, PennWell and Judge Brett argued all their points, without exception, on the basis of the "on acceptance" contract that never was. The four allegations they put forth all rose from Holton's affidavits: 1) Major refused to make the corrections requested by the Marathon analyst, David Millard, ("Millard"), referred to as the ("Millard incident"); 2) In the rewrite CGW associate editor, Stephen M. Porter ("Porter"), requested of Major in the first draft (of two) of the Boeing article, though Major made some minor corrections, he failed to make the "substantive" corrections asked for; 3) After the Boeing check was mailed, Boeing personnel told Porter they found "substantial" inaccuracies in the rewritten version; and 4) the "threat" of Major's newsletters.

What this Court should note is that these

allegations, even if true (which, as will be shown, they are not) are totally irrelevant to the actual contract, which clearly states:

> "Also, it is understood that the Author's proposed work will be done on assignment, which means that the Publication will pay the Author, in full, within 30 days of its receipt of the Author's completed work, according to the terms of this agreement, and that this payment will be non-refundable."

At the time of the termination, Major submitted two articles. PennWell paid for the Boeing article, but refunded it with the stop-payment on its check. It did not pay for the Marathon article and announced it would not pay for any other. PennWell breached the contract.

The only way PennWell could have legally refused payment for any one much less six of the articles is if a CGW editor asked for corrections within 30 days that Major did not make. The relevant phrases in the contract are:

> "The terms of agreement between the Author, MICHAEL J. MAJOR, and the Publication, COMPUTER GRAPHIS WORLD, ... are ... a response to all communications within 30 days ... The Author, Michael J. Major, guarantees that his work will meet the highest

editorial standards, that, if the Editor finds the work in any way unsatisfactory, the Author will make all the necessary corrections for no added charge."

PennWell and Judge Brett have insistently plucked the phrase "highest editorial standards" out of the very sentence in which it occurs to make it mean a "subjective" fantasy which allows PennWell to terminate the contract on the basis of four reasons which were not told to Major, either orally or in writing at the time of the termination, nor are they in evidence in any of CGW's internal memos as indications that they thought Major was guilty of a breach, but were simply fabrications made up over a year later by the PennWell lawyers for trial.

The negotiating letters between Pope and Major offer abundant evidence that both sides were aware that all the "highest editorial standards" phrase guaranteed is that Major would make any changes the editor requested. Moreover,

the redundant footnote Pope inserted into the contract makes this even more achingly obvious:

> "Payment period of 30 days starts only once Author has made any corrections or rewrites Editor may request."

Both editors testified at trial that Major made all of the corrections they requested. And, even more significantly, Holton, in his second, 7/9/87 affidavit, swore that aside from the first draft of the Boeing article, for which the editors requested corrections which both of them told and/or wrote Major were acceptable, "no editor at CGW requested corrections of any other article submitted by Major".

In other words, following its custom, PennWell defaulted on the breach of contract issue before the trial began.

This salient fact is the key to understanding the massive amount of perjured and defamatory testimony of PennWell at trial, sustained and perpetuated by Judge Brett.

The PennWell story goes like this: Major first misrepresented himself as an employee of PennWell to dishonestly gain access to the various corporations interviewed. Major submitted a badly written first draft of the Boeing article, containing numerous errors of both content and style, but the CGW editors, out of the kindness of their hearts, gave Major another chance with the rewrite. However, the rewrite, though showing improvement on minor matters, didn't make the substantive corrections requested by Porter. Furthermore, after the check had been sent, Boeing personnel told Porter that the rewritten article contained substantial inaccuracies. At the same time the CGW editors discovered that Major had refused to make the corrections requested of him by Marathon's Millard, being totally uncooperative and verbally abusive, swearing at him several times and slamming down the phone. The sum total of such professional incompetence and reprehensible con-

duct, along with the threat of his newsletters, was such that PennWell was justified in terminating the contract.

Judge Brett gave a special embellishment to Major's phone conversation with Millard in the point 3 footnote of his findings:

> "Major misconceived Millard's suggestions for changes in the Marathon article as censorship, thereby implicating a First Amendment free speech issue. Major's conclusions in this regard were erroneous because Miller's concerns dealt with essentially with article content, accuracy, and misquotes. Major became indignant and told Millard to 'go fuck himself' and hung up."

So here we have the portrait of a writer not only totally incompetent, unprofessional, and dishonest, but also so bizarrely stupid, self-defeating, and irrational that instead of simply trying to sneak the inferior article past Millard, he willingly sent it to him for corrections and then, when Millard called to ask for these corrections, Major few into an egomaniacal rage, told Millard to "go fuck himself" and slammed down the phone.

This portrait, which projects so much bad

faith onto Major that attention to PennWell's bad faith is effectively deflected, dovetails neatly into Judge Brett's depiction of Major's "emotional instability" and "mental derangement".

Should this portrait be true, it would represent a devastating indictment of Major; however, if not true, an even more devastating indictment of PennWell in general and, in particular, Judge Brett.

Regarding the Millard incident, even if what Judge Brett said was true, it is irrelevant to the contract, which is with CGW, not Marathon. And Major guaranteed he would make any changes a CGW editor would request, not a Marathon employee. But the fact is that Millard demanded not corrections, but censorship.

Why is a federal judge entering the words "go fuck yourself" in a court proceeding when all of the parties had preserved the decorum of "go bleep yourself", the meaning of which

was clear? The obvious answer is that the word "fuck", especially when taken out of context, has a prejudicial connotation. Judge Brett did not say that Millard said A, by which he meant B, but Major had wrongly misinterpreted it as C. No, he simply said Millard asked for corrections but Major said, "go fuck yourself".

Where did Judge Brett get his information? There were only two people on the phone, Major and Millard. Judge Brett totally falsified Major's version as stated at trial and in his papers. Major agreed to send the manuscript to Millard only on the condition that Major would correct any errors of fact or context but would not submit to censorship. Millard twice explicitly agreed. When Millard called he demanded the withdrawal of the article or semantic variations of the same thing. When, after 45 minutes of Major telling Millard repeatedly to send in any corrections he would make, and Millard was unable to point to a

single point of inaccuracy in the article, Major told Millard that any further discussion he wanted of the matter he would have to take up with a CGW editor and gave him CGW's number. When Millard then threatened Major with a lawsuit from Marathon Oil, Major gave that gentleman the verbal sendoff he deserved and hung up.

PennWell did not call Millard as a witness for the very good reason it knew that his allegation that Major refused to make corrections was slander and would not hold up under cross examination. Judge Brett, therefore, based his findings on hearsay from PennWell personnel, hardly an unbiased source. Moreover, the secondary documents, the Wright memo, reflecting Millard's call to CGW, Millard's 11/22/87 letter to Major, and his returned manuscript with unintelligible circles of "misrepresentation" corroborate Major's story.

Even Rowland admits that Millard

had agreed not to impose censorship as a condition for reading the article, and that Major had told him to send any corrections he might have. The Wright memo says, "much of the article is excellent" and Millard's letter states "the content of the graphics philosophy on pages 4-8 is basically correct in the context of Marathon's technical computer activities".

It's clear his letter is demanding censorship, not corrections (i.e. "You ordered me to correct 'discrepancies' and mail them back", "I was told you would only fix non-factual in-information" (Was Major supposed to fix factual information?) and "Your reply was that I was to 'send the corrections'". It's transparent that in none of the three above documents was he pointing out any errors in a manner that a writer could corrent them. On the untenable premise that he had, the corrections would have been meaningless since both Millard's letter and the Wright memo made unequivocally

clear that Marathon will do everything in its "power" to "prevent publication of the article anywhere".

Had the issue been corrections rather than censorship, a CGW editor would have told Major to make the corrections or Millard to send the corrections to CGW. But, as McMillan testified, when he later spoke with Millard he agreed not to proceed with the article. In other words, he violated the most fundamental journalistic standards by caving into censorship. And Judge Brett, in helping his wealthy local business cheat on its accounts payable, turned a principled stand against censorship into an exercise in defilement of the First Amendment.

In terms of the "substantive errors" that Holton said remained after Major's Boeing rewrite, Major, at trial, announced he was prepared to go through the corrections one by one and have Porter and McMillan testify he had made each and every one or

perjure themselves several times each. Both editors promptly testified that Major made 100 percent of the corrections requested.

Regarding the alleged "substantial inaccuracies" that Boeing personnel supposedly pointed out in the rewrite, Major, at trial, told Porter that Holton had testified that no Boeing personnel had ever contacted CGW with a complaint of any kind; that the Boeing personnel had found the article Major sent to them 100 percent accurate; and that when Major had called the Boeing personnel a few days before, they stated they recalled Major and both interviews, but did not have any recollection of ever having spoken to a CGW editor. Porter promptly testified that no one at Boeing had ever complained about Major's article or conduct in any way, that he had never spoken to anyone at Boeing about the article, and did not even know if they had read it.

This did not prevent Judge Brett from copying, in his findings, from Holton's affidavits con-

cerning the rewrite being "not ready for publication" and the "substantial inaccuracies" pointed out by Boeing, almost verbatim. Thus Judge Brett did not hesitate to base his "facts" on affidavits revealed to be perjured at the very trial over which he presided.

Holton, in his trial deposition, swore that Major's behavior in the Millard incident was so reprehensible that he would never consider allowing such a writer represent CGW to an outside corporation. Yet he testified that he heard about the incident in the Wright memo, dated 11/21/85. Yet that did not prevent him from allowing his two editors to send Major back to Boeing for a harassment rewrite just two weeks later.

Holton testified he had found out about the "substantive changes" and the "substantial inaccuracies by the 1/7/86 McMillan memo when a meeting was held to decide what to do with Major. But all that is reflected in that memo (outside of "dump Major right

away" -- which Holton swore McMillan never wrote) is that the rewrite was acceptable and slated for March 1 publication. The check is dated 1/14/86. McMillan's letter accepting the Boeing article and terminating the contract is dated 1/16/86. Holton also testified that Major's representing himself as a writer whom the CGW editor had told to search out story ideas and then (after the contract had been signed) as having been commissioned by CGW to write the article as professionally correct. Holton then testified that a rejected article is always accompanied by the return of the article with a rejection letter, that CGW had never mailed Major same. Holton then twice swore that the Boeing article had never been rejected.

It should be noted that the four arguments PennWell presented at trial were different from the three reasons in McMillan's letter: "unsuitability of the manuscripts", "change in editorial focus" and fiscal restraints".

The latter two reasons obviously have nothing to do with the contract. Nor does the first. When Major called McMillan after the termination, he told Major, as had Porter previously, that he had not read the Marathon piece. So no one at CGW was in any position to judge the suitability of the Marathon piece since it had not been read, and the Boeing piece was certainly suitable for it had been accepted for publication.

Why did not McMillan state the trial reasons in his letter? He knew if he said Major had not made the "substantive changes", requested, Major would have asked, "what changes?" McMillan knew that if he said Boeing personnel had found "substantial inaccuracies", Major would have called Boeing and asked "what inaccuracies?". McMillan knew if he said Major failed to make the changes Millard asked for, Major would have said, "tell Millard to send them along." These were fabrications

the PennWell lawyers made up for trial. At trial McMillan admitted his three reasons were also fabrications so as not to hurt Major's feelings.

What happened is that Major had previously had a good relationship with PennWell. He had sold six article to two editors, one of them Pope, at another PennWell publication. Pope continually wrote Major's work was "excellent" and Major was "one of the most professional writers I have known". When that magazine folded and Pope moved on to CGW, he took Major on, with the same price and contract as before, in a company in which the average price is $400 and no contracts are signed with writers. This was a time of volatile change for CGW. The magazine was being moved from California to Littleton. There was a computer slump and ads were down. Holton, new to the magazine, as were McMillan and Porter, saw the contract and told Pope to insert a loophole clause. Major refused and

negotiated Pope back to the original contract.

In the Millard incident the new regime saw a pretext for "dumping Major" (as they were to later dump Pope), but knew it could not stand on its own. McMillan saw an opportunity in that the magazine was in transition from a very technical to a more readable style. He neglected to tell Major of this change, hoping to force Major out in a harassment rewrite. But Major turned the rewrite around in just a few days, causing Porter to tell Major "it was just what we were looking for", and Major sent the Marathon piece in as well, thus making McMillan due for what was then his entire month's freelance budget. Porter called Boeing fishing for "substantial inaccuracies". He couldn't find any. McMillan decided to cut his losses by paying for the Boeing piece, then "dumping Major".

The McMillan letter did not ask Major for corrections to the Boeing article because

CGW was accepting it for publication. The letter did not ask for corrections to the Marathon piece since it was terminating the contract. McMillan did not state that Major had breached the contract. He stated that CGW was terminating it. There is no mention whatsoever in letters to Major or internal memos of the "substantive changes", "substantial inaccuracies" or newsletter "threats". The Millard piece is mentioned only obliquely. And in no case is there any evidence that CGW personnel ever thought Major had breached the contract. In fact, just the opposite is the case. McMillan closed his memo to Holton with:

> "I suggest we dump Major right away and have written a letter to that end. I am somewhat concerned, though, that he might put up a stink based on his agreement with David. Would you please review that agreement (in the file) and my letter before I go further? Thanks."

McMillan was fully aware that CGW was breaching the contract, and, in chalking up points by "dumping" a highly-paid writer, was also protecting himself by putting his "con-

cern" in writing to his boss. Holton, however, didn't follow McMillan's advice. He didn't read the operative contract.

Holton, in his testimony, agreed with Major's recollection that in his 1/31/86 call to protest the termination, Holton told Major that even at that late date the Boeing article was still accepted and he had issued the check. It was in this conversation that Holton told Major "We agreed to pay upon acceptance but are not accepting more articles by Michael Major". Here, for the first time, Holton realized that Major had not signed the loopholed contract. Not only had Holton not been able to fleece Major, he hadn't been able to enforce the loopholed contract on his own editor. It was this realization and not any perceived "threat" (unless it was the threat of knowing he was legally bound by the contract) which caused Holton to call Biolchini and tell him to put some legal screws into Major.

As Biolchini's 2/3/86 letter demonstrates absolutely, the check was not bounced because of any "threat" in Major's 1/21/86 letter announcing the newsletters. Biolchini referred to that letter and stated in spite of what he termedits "intentional defamation and libel", he offered the full payment for the Boeing article (already mailed) as a "jesture" of "good faith" and a "complete settlement of this dispute" - at the very moment he was ordering a stop payment in an act of violence designed to intimidate Major from exercising his constitutional rights of airing a complaint in public and/or taking it to court.

The Oklahoma Commercial Code, 12. O.S. §1-203, pg. 36, states:

> "Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement ... This section is the 'heart' of the Commercial Code."

Judge Brett, in calling that indelible act of bad faith, the bounced check, "good faith",

joined with Biolchini and all of the other conspirators in striking at the heart of OKlahoma law, as well as the fundamental principles of the United States Constitution.

E. DOES THIS FEDERAL JUDGE, IN RULING FOR THE PRO SE FOR A PORTION OF THIS CONTRACT DISPUTE, HAVE THE RIGHT TO THEN ARBITRARILY DENY HIM ALL OF THE AWARDS FLOWING FROM HIS DECICISION, WHEN THESE AWARDS ARE STIPULATED IN STATUTORY PROVISIONS FOR ATTORNEYS FEES, THE EXPLICITTERMS OF THE CONTRACT, PLUS ALL THE RELEVANT STATE AND FEDERAL LAWS REGARDING AWARDS STEMMING FROM A BAD FAITH BREACH OR BAD FAITH ACTIONS?

Judge Brett ruled in Major's favor on the Breach of Contract cause for the Boeing claim, but then denied him all of the awards flowing from that award, to which he was legally entitled from several sources.

The first is attorney fees. Oklahoma case law allows attorney fees for the prevailing party in both diversity jurisdiction cases in federal court and in contract disputes. Moreover, there is a specific statutory entitlement for attorneys fees from Judge Griffin's order and OK Stat. §1757.

There is no negative precedent in Oklahoma law regarding a pro se being awarded attorney fees. Even Biolchini has acknowledged that Oklahoma law does not address the subject one way or another. And Biolchini himself pointed to the Cox v. U.S. Dept. of Justice case as a precedent for a federal court awarding a pro se attorney fees.

Even if Major should not be allowed attorney fees, the contract stipulates that Major should receive essentially this same award through its provision of "normal expenses". The hundreds of hours Major has put in on this case are collection costs required to receive payment. All of Oklahoma case law (for a sampling see the Table of Cases marked by an *) support Major's contention that the "normal expenses" should cover such collection costs, especially in a bad faith breach such as this.

Christian v. American Home Assur. Co. 48 Okla, B.A.J. 1714, 1715 (7/12/77) clearly

established that if the defendant's breach of contract is accompanied by bad faith, he is liable (separate from the independent tort of intentional infliction of emotional distress and punitive damanges), all of the aggravated monetary damages and mental suffering resulting from the breach, including loss of earnings, credit liabilities, litigation costs, and the mental anguish which results.

Also, both Fed.R.Civ.P. R. 11 and R. 56(e) stipulate reasonable expenses, <u>including</u> attorney fees for the other side's bad faith papers, which indicates Major should be paid these expenses even if he was not allowed attorney fees.

Judge Brett, in a sactimonious show, said he was issuing sanctions against Major of "only $300". But the fact is that he unlawfully denied Major at least $300,000 flowing from his prevailing on the Boeing claim alone, not to mention the even more substantial awards which would have flowed

had not Judge Brett suppressed the facts of the Conspiracy and other causes. This no doubt is what the appeals court meant in praising Judge Brett's "tempered condemnation" and "tolerant but firm professionalism".

V.

REASONS FOR GRANTING THE WRIT

This is a case in which three lawyers, in conspiring with a small claims judge to obstruct the justice of a citizen pro se's scheduled hearing, acted in the arrogant and cynical conviction that all they had to do was corrupt that first judge, and every judge following would be more eager to cover up the wrongdoing of his colleagues than to grant the citizen an unbiased hearing, much less to administer justice.

The citizen was denied any hearing or appeal in state court. The federal judge in Tacoma, WA sent the case to Tulsa, OK on the basis

of the convenience of nonexistent witnesses. The Tulsa judge required the citizen to fly 1,500 miles for a nonexistent hearing to be told his case had not been read and the only papers worth considering were the defendant's motion to dismiss and counterclaim, improperly filed, illegally transferred, twice defaulted in state court and never filed in federal court. The appeals court called this judge's behavior "exemplary".

This Court is truly the court of last resort for a case in which the facts have never been allowed to surface in an impartial hearing, for the simple reason that first one, and then several judges would be implicated in wrongdoing.

It is for this Court to determine whether the XIV Amendment means the American system of justice is to be subjected to the rule of law or money.

DATED THIS 10th day of April, 1989

Michael J. Major, Pro Se
610 Saddle Drive
Port Townsend, WA 98368
(206) 385-4156